IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 1059 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

P.M.SHUKLA

Versus

SANTOSH HARDWARE]

Appearance:

MR BB NAYAK for Petitioner

MR DF AMIN for Respondent No. 1 TO 6

MR SJ DAVE, Ld. APP for Respondent No.7

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/06/2000

ORAL JUDGEMENT

1. Heard Mr.B.B.Nayak, learned advocate for the

petitioner, Mr.D.F.Amin, learned advocate for the respondents No.1 to 6 and Mr.S.J.Dave, learned APP for the respondent No.7-State.

2. Respondent No.1 is a partnership firm carrying on its business at Godhra and respondent Nos. 2 to 6 are the partners of respondent No.1 firm. Respondent No.1 firm filed its return of income for the assessment year 1982-83 and the assessment was completed by the Income Tax Officer on 31.3.1984 under Section 144 of the Income Tax Act, 1961, taking into consideration the duplicate books of accounts seized by the Sales Tax Department, wherein the total income of the assessee firm was determined and has not accepted the income shown by the respondent No.1 firm but has determined more income than the income shown by the respondent no.1. The Income Tax Officer thereafter passed order under section 271(1)(c) on 19.2.1986 levying minimum penalty of Rs.23,540/-. The Commissioner of Income Tax (Appeals), Baroda, vide order dated 29.10.1987 confirmed the penalty order. Thereafter on 26.2.1990 a complaint was filed in the court of Chief Judicial Magistrate, Godhra, being Criminal Case No.1008/90 for offence under section 276(C)(1) and section 277 of the Income Tax Act, 1961 against the respondent No.1 firm and its partners.

3. On receiving the said complaint, the learned Chief Judicial Magistrate, Panchmahals at Godhra has issued the process. Thereafter respondents have appeared through their learned advocates and they have pleaded guilty. In pursuance of that, the learned Chief Judicial Magistrate by his judgment and order dated 6.5.1991 convicted the accused for the offence alleged against them and sentenced respondents No.2 to 6 till rising of the court and imposed fine of Rs.250/- each on all the accused, failing which ordered them to undergo simple imprisonment for 12 days.

4. Against that judgment and order, the present petition has been filed by the petitioner prayed for quashing and setting aside the judgment and order dated 6.5.91 passed by the learned Chief Judicial Magistrate, Panchmahals at Godhra in Criminal Case No.1008/90, mainly on the following grounds:

"That the learned Magistrate erred in law in trying the case in a summary way as provided under section 260 of the Code of Criminal Procedure, 1973. The learned Magistrate ought to have appreciated that since the offence under section 276(C)(1)(ii) and section 277 of the

Income Tax Act, 1961 was punishable with imprisonment for a term exceeding two years he had no power to try the case in a summary wasy as provided under section 260 of the Code of Criminal Procedure."

5. I have heard learned advocates for the respective parties. Learned advocate for the respondents No.1 to 6 and learned APP for the respondent No.7 has fairly concede that there is a substance in the argument advanced by the learned advocate for the petitioner and in that event the judgment and order passed by the court below is required to be set aside and in that case matter is required to be remanded back to the appropriate court for proceeding further in accordance with law. Hence I pass the following order:

The judgment and order dated 6.5.1991 passed by the learned Chief Judicial Magistrate, Panchmahals at Godhra in Criminal Case No.1008 of 1990 is hereby quashed and set aside. The learned Chief Judicial Magistrate is hereby directed to proceed further with the Criminal Case No.1008 of 1990 and decide the same in accordance with law.

With the aforesaid direction, this Criminal Revision Application stands disposed of. Rule is made absolute.

(R.P. Dholakia, J.)

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